

**HOUSE . . . . . No. 2732**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Mark V. Falzone and Richard T. Moore**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act to Promote Sales Tax Fairness for Main Street Retailers.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mark V. Falzone	9th Essex
John J. Binienda	17th Worcester
Sean Garballey	23rd Middlesex
Cory Atkins	14th Middlesex
Steven J. D'Amico	4th Bristol
Matthew C. Patrick	3rd Barnstable
Lori Ehrlich	8th Essex
Elizabeth A. Malia	11th Suffolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT TO PROMOTE SALES TAX FAIRNESS FOR MAIN STREET RETAILERS.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to streamline and simplify the collection of sales tax in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1: Section 1 of Chapter 64H of the General Laws, as so appearing, is hereby  
2 amended by striking it out in its entirety and inserting in its place the following new section 1:

3 As used in this chapter and chapter 64I the following words shall have the following  
4 meanings:

5 "Alcoholic Beverages" means beverages that are suitable for human consumption and  
6 contain one-half of one percent or more of alcohol by volume.

7 "Bundled transaction" is the retail sale of two or more products, except real property and  
8 services to real property, where (1) the products are otherwise distinct and identifiable, and (2)  
9 the products are sold for one non-itemized price. A "bundled transaction" does not include the  
10 sale of any products in which the "sales price" varies, or is negotiable, based on the selection by  
11 the purchaser of the products included in the transaction.

12 (A) "Distinct and identifiable products" does not include:

13 1. Packaging - such as containers, boxes, sacks, bags, and bottles or other materials  
14 such as wrapping, labels, tags, and instruction guides that accompany the "retail sale" of  
15 the products and are incidental or immaterial to the "retail sale" thereof. Examples of  
16 packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry  
17 cleaning garment bags and express delivery envelopes and boxes.

18 2. A product provided free of charge with the required purchase of another product. A  
19 product is "provided free of charge" if the "sales price" of the product purchased does not  
20 vary depending on the inclusion of the product "provided free of charge."

21 3. Items included in the definition of "sales price" in G.L. c. 64H, § 1.

22 (B) The term "one non-itemized price" does not include a price that is separately identified by  
23 product on binding sales or other supporting sales-related documentation made available to the  
24 customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt,  
25 contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or  
26 price list.

27 (C) A transaction that otherwise meets the definition of a "bundled transaction" as defined above,  
28 is not a "bundled transaction" if it is:

29 (1) The "retail sale" of tangible personal property and a service where the tangible  
30 personal property is essential to the use of the service, and is provided exclusively in  
31 connection with the service, and the true object of the transaction is the service; or

32 (2) The "retail sale" of services where one service is provided that is essential to the use  
33 or receipt of a second service and the first service is provided exclusively in connection  
34 with the second service and the true object of the transaction is the second service; or

35 (3) A transaction that includes taxable products and nontaxable products and the  
36 "purchase price" or "sales price" of the taxable products is de minimis.

37 (a) De minimis means the seller's "purchase price" or "sales price" of the taxable  
38 products is ten percent (10%) or less of the total "purchase price" or "sales price"  
39 of the bundled products.

40 (b) Sellers shall use either the "purchase price" or the "sales price" of the products  
41 to determine if the taxable products are de minimis. Sellers may not use a  
42 combination of the "purchase price" and "sales price" of the products to determine  
43 if the taxable products are de minimis.

44 (c) Sellers shall use the full term of a service contract to determine if the  
45 taxable products are de minimis; or

46 (4) The "retail sale" of exempt tangible personal property and taxable tangible personal  
47 property where:

48 (a) The transaction includes "food and food ingredients", "drugs", "durable  
49 medical equipment", "mobility enhancing equipment", "over-the-counter drugs",  
50 "prosthetic devices" as defined in G.L. c. 64H, § 1, or medical supplies; and

51 (b) Where the seller's "purchase price" or "sales price" of the taxable tangible  
52 personal property is fifty percent (50%) or less of the total "purchase price" or

53 "sales price" of the bundled tangible personal property. Sellers may not use a  
54 combination of the "purchase price" and "sales price" of the tangible personal  
55 property when making the fifty percent (50%) determination for a transaction.

56 "Business" means any activity engaged in by any person or caused to be engaged in by him  
57 with the object of gain, benefit or advantage, either direct or indirect.

58 "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in  
59 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,  
60 drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no  
61 refrigeration.

62 "Certified Automated System" means software certified by the Streamlined Sales Tax  
63 Governing Board to calculate the tax imposed by each jurisdiction on a transaction, determine  
64 the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

65 "Certified Service Provider" means an agent certified by the Streamlined Sales Tax  
66 Governing Board to perform all of a seller's sales and use tax functions, other than the seller's  
67 obligation to remit tax on its own purchases.

68 "Clothing" means all human wearing apparel suitable for general use.

69 "Clothing accessories or equipment" means incidental items worn on the person or in  
70 conjunction with "clothing."

71 "Commissioner" means the commissioner of revenue.

72 "Computer" means an electronic device that accepts information in digital or similar form  
73 and manipulates it for a result based on a sequence of instructions.

74 "Computer software" means a set of coded instructions designed to cause a "computer" or  
75 automatic data processing equipment to perform a task.

76 "Delivered electronically" means delivered to the purchaser by means other than tangible  
77 storage media.

78 "Delivery charges" means charges by the seller of personal property or services for  
79 preparation and delivery to a location designated by the purchaser of personal property or  
80 services including, but not limited to, transportation, shipping, postage, handling, crating, and  
81 packing. The term "delivery charges" does not include "delivery charges" for "direct mail."

82 If a shipment includes exempt property and taxable property, the seller should allocate the  
83 delivery charge by using:

84 A. A percentage based on the total sales prices of the taxable property compared to the  
85 total sales prices of all property in the shipment; or

86 B. A percentage based on the total weight of the taxable property compared to the total  
87 weight of all property in the shipment.

88 The seller must tax the percentage of the delivery charge allocated to the taxable property but  
89 does not have to tax the percentage allocated to the exempt property.

90 "Dietary supplement" means any product, other than "tobacco," intended to supplement the  
91 diet that:

92 (a) Contains one or more of the following dietary ingredients:

93 1. A vitamin;

94 2. A mineral;

- 95           3. An herb or other botanical;
- 96           4. An amino acid;
- 97           5. A dietary substance for use by humans to supplement the diet by increasing the total  
98           dietary intake; or
- 99           6. A concentrate, metabolite, constituent, extract, or combination of any ingredient  
100           described in above; and

101           (b) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if  
102 not intended for ingestion in such a form, is not represented as conventional food and is not  
103 represented for use as a sole item of a meal or of the diet; and

104           (c) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental  
105 Facts" box found on the label and as required pursuant to 21 C.F.R § 101.36.

106           "Specified digital products" means electronically transferred:

107           (a) "Digital Audio-Visual Works" which means a series of related images which, when  
108 shown in succession, impart an impression of motion, together with accompanying sounds, if  
109 any,

110           (b) "Digital Audio Works" which means works that result from the fixation of a series of  
111 musical, spoken, or other sounds, including ringtones, and

112           (c) "Digital Books" which means works that are generally recognized in the ordinary and  
113 usual sense as "books".

114 For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files  
115 that are downloaded onto a device and that may be used to alert the customer with respect to a  
116 communication. For purposes of the definitions of “specified digital products”, “transferred  
117 electronically” means obtained by the purchaser by means other than tangible storage media and  
118 “end user” means any person other than a person who receives by contract a product transferred  
119 electronically for further commercial broadcast, rebroadcast, transmission, retransmission,  
120 licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part,  
121 to another person or persons.

122 "Direct mail" means printed material delivered or distributed by United States mail or other  
123 delivery service to a mass audience or to addressees on a mailing list provided by the purchaser  
124 or at the direction of the purchaser when the cost of the items are not billed directly to the  
125 recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the  
126 purchaser to the direct mail seller for inclusion in the package containing the printed material.  
127 "Direct mail" does not include multiple items of printed material delivered to a single address.

128 "Drug" means a compound, substance or preparation, and any component of a compound,  
129 substance or preparation, other than "food and food ingredients," "dietary supplements" or  
130 "alcoholic beverages:"

- 131 (a) Recognized in the official United State Pharmacopoeia, official Homeopathic  
132 Pharmacopoeia of the United States, or official National Formulary, and supplement to  
133 any of them; or  
134 (b) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease  
135 in human beings; or

136 (c) Intended to affect the structure or any function of the body.

137 "Durable medical equipment" means equipment including repair and replacement parts for  
138 same, but does not include "mobility enhancing equipment," which:

139 (a) Can withstand repeated use; and

140 (b) Is primarily and customarily used to serve a medical purpose; and

141 (c) Generally is not useful to a person in the absence of illness or injury; and

142 (c) Is not worn in or on the body.

143 As used in this definition, "repair and replacement parts" does not include items which are for  
144 single patient use only.

145 "Electronic" means relating to technology having electrical, digital, magnetic, wireless,  
146 optical, electromagnetic, or similar capabilities.

147 "Engaged in business" means commencing, conducting or continuing in business, as well as  
148 liquidating a business when the liquidator thereof holds himself out to the public as conducting  
149 such a business.

150 "Engaged in business in the commonwealth" means having a business location in the  
151 commonwealth; regularly or systematically soliciting orders for the sale of services to be  
152 performed within the commonwealth or for the sale of tangible personal property for delivery to  
153 destinations in the commonwealth; otherwise exploiting the retail sales market in the  
154 commonwealth through any means whatsoever, including, but not limited to, salesmen, solicitors  
155 or representatives in the commonwealth, catalogs or other solicitation materials sent through the  
156 mails or otherwise, billboards, advertising or solicitations in newspapers, magazines, radio or

157 television broadcasts, computer networks or in any other communications medium; or regularly  
158 engaged in the delivery of property or the performance of services in the commonwealth. A  
159 person shall be considered to have a business location in the commonwealth only if such person  
160 (i) owns or leases real property within the commonwealth; (ii) has one or more employees  
161 located in the commonwealth; (iii) regularly maintains a stock of tangible personal property in  
162 the commonwealth for sale in the ordinary course of business; or (iv) regularly leases out  
163 tangible personal property for use in the commonwealth. For the purposes of this paragraph,  
164 property on consignment in the hands of a consignee and offered for sale by the consignee on his  
165 own account shall not be considered as stock maintained by the consignor; a person having a  
166 business location in the commonwealth solely by reason of regularly leasing out tangible  
167 personal property shall be considered to have a business location in the commonwealth only with  
168 respect to such leased property; and an employee shall be considered to be located in the  
169 commonwealth if (a) his service is performed entirely within the commonwealth or (b) his  
170 service is performed both within and without the commonwealth but in the performance of his  
171 services he regularly commences his activities at, and returns to, a place within the  
172 commonwealth. "Within the commonwealth" means within the exterior limits of the  
173 commonwealth of Massachusetts, and includes all territory within said limits owned by, or  
174 leased or ceded to, the United States of America.

175 "Essential Clothing" means clothing with a sales price below \$175.

176 "Food and food ingredients" means substances, whether in liquid, concentrated, solid,  
177 frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are  
178 consumed for their taste or nutritional value. "Food and food ingredients" does not include

179 "alcoholic beverages", "candy", "dietary supplements", "soft drinks", or "tobacco", as those  
180 terms are defined in this chapter.

181 "Food sold through vending machines" means food dispensed from a machine or other  
182 mechanical device that accepts payment.

183 "Fur clothing" means "clothing" that is required to be labeled as a fur product under the  
184 Federal Fur Products Labeling Act (15 U.S.C. § 69), and the value of the fur components in the  
185 product is more than three times the value of the next most valuable tangible component. "Fur  
186 clothing" is human wearing apparel suitable for general use." For the purposes of the definition  
187 of "fur clothing" the term "fur" means any animal skin or part thereof with hair, fleece, or fur  
188 fibers attached thereto, either in its raw or processed state, but shall not include such skins that  
189 have been converted into leather or suede, or which in processing, the hair, fleece, or fur fiber  
190 has been completely removed.

191 "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste,  
192 mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items  
193 meet the definition of "over-the-counter-drugs."

194 "Gross receipts" means the total sales price received by a seller as a consideration for retail  
195 sales, provided however that a seller may exclude from its gross receipts the amount charged for  
196 property returned by purchasers to sellers upon rescission of contracts of sale when the entire  
197 amounts charged therefore, less the sellers' established handling fees, if any, for such return of  
198 property, are refunded either in cash or credit, and when the property is returned within ninety  
199 days from the date of sale, and the entire sales tax paid is returned to the purchaser.

200 "Lease or rental" means any transfer of possession or control of tangible personal property  
201 for a fixed or indeterminate term for consideration. A lease or rental may include future options  
202 to purchase or extend.

203 (a) Lease or rental does not include:

204 1. A transfer of possession or control of property under a security agreement or deferred  
205 payment plan that requires the transfer of title upon completion of the required payments;

206 2. A transfer or possession or control of property under an agreement that requires the transfer  
207 of title upon completion of required payments and payment of an option price does not exceed  
208 the greater of one hundred dollars or one percent of the total required payments; or

209 3. Providing tangible personal property along with an operator for a fixed or indeterminate  
210 period of time. A condition of this exclusion is that the operator is necessary for the equipment to  
211 perform as designed. For the purpose of this subsection, an operator must do more than maintain,  
212 inspect, or set-up the tangible personal property.

213 (b) Lease or rental does include agreements covering motor vehicles and trailers where the  
214 amount of consideration may be increased or decreased by reference to the amount realized  
215 upon sale or disposition of the property as defined in 26 USC 7701(h)(1).

216 (c) This definition shall be used for sales and use tax purposes regardless if a transaction is  
217 characterized as a lease or rental under generally accepted accounting principles, the Internal  
218 Revenue Code, the Uniform Commercial Code, or other provisions of federal, state or local  
219 law.

220 (d) This definition will be applied only prospectively from the date of adoption and will have no  
221 retroactive impact on existing leases or rentals.

222 "Load and leave" means delivery to the purchaser by use of a tangible storage media where  
223 the tangible storage media is not physically transferred to the purchaser.

224 "Mobility enhancing equipment" means equipment including repair and replacement parts to  
225 same which:

226 (a) Is primarily and customarily used to provide or increase the ability to move from one  
227 place to another and which is appropriate for use either in a home or a motor vehicle;

228 and

229 (b) Is not generally used by persons with normal mobility; and

230 (c) Does not include any motor vehicle or equipment on a motor vehicle normally provided  
231 by a motor vehicle manufacturer.

232 Mobility enhancing equipment does not include "durable medical equipment."

233 "Over-the-counter drug" means a drug that contains a label that identifies the product as a  
234 drug as required by 21 C.F.R. § 201.66. The "over-the-counter-drug" label includes:

235 (a) A "Drug Facts" panel; or

236 (b) A statement of the "active ingredient(s)" with a list of those ingredients contained in the  
237 compound, substance or preparation.

238 An over-the-counter drug does not include "grooming and hygiene products."

239 "Person", An individual, trust, estate, fiduciary, partnership, limited liability company,  
240 limited liability partnership, corporation, or any other legal entity.

241 "Prepared food" means:

242 (a) Food sold in a heated state or heated by the seller;

243 (b) Two or more food ingredients mixed or combined by the seller for sale as a single item;

244 or

245 (c) Food sold with eating utensils provided by the seller, including plates, knives, forks,

246 spoons, glasses, cups, napkins, or straws. A plate does not include a container or

247 packaging used to transport the food.

248 "Prepared food" in section (b) of this definition does not include food that is only cut,

249 repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these

250 raw animal foods requiring cooking by the consumer as recommended by the Food and Drug

251 Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.

252 "Prepared food" does not include the following if sold without eating utensils provided by the

253 seller:

254 1. Food sold in an unheated state by weight or volume as a single item.

255 2. Bakery items including but not limited to bread, rolls, buns, biscuits, bagels,

256 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, cookies or tortillas.

257 "Prescription" means an order, formula or recipe issued in any form of oral, written,

258 electronic, or other means of transmission by a duly licensed practitioner.

259 "Prewritten computer software" means "computer software," including prewritten upgrades,

260 which is not designed and developed by the author or other creator to the specifications of a

261 specific purchaser. The combining of two or more "prewritten computer software" programs or

262 prewritten portions thereof does not cause the combination to be other than "prewritten computer  
263 software." "Prewritten computer software" includes software designed and developed by the  
264 author or other creator to the specifications of a specific purchaser when it is sold to a person  
265 other than the specific purchaser. Where a person modifies or enhances "computer software" of  
266 which the person is not the author or creator, the person shall be deemed to be the author or  
267 creator only of such person's modifications or enhancements. "Prewritten computer software" or  
268 a prewritten portion thereof that is modified or enhanced to any degree, where such modification  
269 or enhancement is designed and developed to the specifications of a specific purchaser, remains  
270 "prewritten computer software;" provided, however, that where there is a reasonable, separately  
271 stated charge or an invoice or other statement of the price given to the purchaser for such  
272 modification or enhancement, such modification or enhancement shall not constitute "prewritten  
273 computer software."

274 "Prosthetic device" means a replacement, corrective, or supportive device including repair  
275 and replacement parts for same worn on or in the body to:

- 276 (a) Artificially replace a missing portion of the body;
- 277 (b) Prevent or correct physical deformity or malfunction; or
- 278 (c) Support a weak or deformed portion of the body.

279 Prosthetic devices include, but are not limited to corrective eyeglasses; contact lenses; hearing  
280 aids and dental prosthesis.

281 "Protective equipment" means items for human wear and designed as protection of the  
282 wearer against injury or disease or as protections against damage or injury of other persons or  
283 property but not suitable for general use.

284 "Purchaser", a person who purchases tangible personal property or services the receipts  
285 from the retail sale of which are taxable under this chapter and includes a buyer, vendee, lessee,  
286 licensee, or grantee.

287 "Purchase price" applies to the measure subject to use tax and has the same meaning as  
288 "sales price".

289 "Retailer" includes (i) every person engaged in the business of making sales at retail; (ii)  
290 every person engaged in the making of retail sales at auction of tangible personal property  
291 whether owned by such person or others; (iii) every person engaged in the business of making  
292 sales for storage, use or other consumption, or in the business of making sales at auction of  
293 tangible personal property whether owned by such person or others for storage, use or other  
294 consumption; (iv) every salesman, representative, peddler or canvasser who, in the opinion of the  
295 commissioner, it is necessary to regard for the efficient administration of this chapter as the agent  
296 of the dealer, distributor, supervisor or employer under whom he operates or from whom he  
297 obtains the tangible personal property sold by him, in which case the commissioner may treat  
298 and regard such agent as the retailer jointly responsible with his principal, employer or  
299 supervisor for the collection and payment of the tax imposed by this chapter; and (v) the  
300 commonwealth, or any political subdivision thereof, or their respective agencies when such  
301 entity is engaged in making sales at retail of a kind ordinarily made by private persons.

302 "Retail establishment", any premises in which the business of selling services or tangible  
303 personal property is conducted, or, in or from which any retail sales are made.

304 "Retail sale or Sale at retail" means any sale, lease, or rental for any purpose other than for resale,  
305 sublease, or subrent.

306 "Sale" and "selling" include (i) any transfer of title or possession, or both, exchange, barter,  
307 lease, rental, conditional or otherwise, of tangible personal property or the performance of  
308 services for a consideration, in any manner or by any means whatsoever; (ii) the producing,  
309 fabricating, processing, printing or imprinting of tangible personal property for a consideration  
310 for consumers who furnish either directly or indirectly the materials used in the producing,  
311 fabricating, processing, printing or imprinting; (iii) the furnishing and distributing of tangible  
312 personal property or services for a consideration by social clubs and fraternal organizations to  
313 their members or others; (iv) a transaction whereby the possession of property is transferred but  
314 the seller retains the title as security for the payment of the price; (v) a transfer for a  
315 consideration of the title or possession of tangible personal property which has been produced,  
316 fabricated or printed to the special order of the customer, or of any publication; (vi) the  
317 furnishing of information by printed, mimeographed or multigraphed matter, or by duplicating  
318 written or printed matter in any other manner, including the services of collecting, compiling or  
319 analyzing information of any kind or nature and furnishing reports thereof to other persons, but  
320 excluding the furnishing of information which is personal or individual in nature and which is  
321 not or may not be substantially incorporated in reports furnished to other persons, and excluding  
322 the services of advertising or other agents, or other persons acting in a representative capacity,  
323 and information services used by newspapers, radio broadcasters and television broadcasters in  
324 the collection and dissemination of news and excluding the furnishing of information by  
325 photocopy or other similar means by not for profit libraries which are recognized as exempt from  
326 taxation under § 501(c)(3) of the Federal Internal Revenue Code; (vii) the performance of  
327 services for a consideration, excluding (a) services performed by an employee for his employer  
328 whether compensated by salary, commission, or otherwise, (b) services performed by a general

329 partner for his partnership and compensated by the receipt of distributive shares of income or  
330 loss from the partnership; and (c) the performance of services for which the provider is  
331 compensated by means of an honorarium, or fee paid to any person or entity registered under 15  
332 USC 80b-3 or 15 USC 78q-1 for services the performance of which require such registration, for  
333 services related thereto or for trust, custody, and related cash management and securities services  
334 of a trust company as defined in chapter one hundred and seventy-two.

335 "Sales price" applies to the measure subject to sales tax and means the total amount of  
336 consideration, including cash, credit, property, and services, for which personal property or  
337 services are sold, leased, or rented, valued in money; whether received in money or otherwise,  
338 without any deduction for the following:

339 (a) The seller's cost of the property sold;

340 (b) The cost of materials used, labor or service cost, interest, losses, all costs of  
341 transportation to the seller, all taxes imposed on the seller, and any other expense of the  
342 seller;

343 (c) Charges by the seller for any services necessary to complete the sale, other than delivery  
344 and installation charges;

345 (d) Delivery charges;

346 (e) Credit for any trade-in, except as provided in sections 26 and 27A of this chapter;

347 The following charges are excluded only if they are separately stated on the invoice, billing, or  
348 similar document given to the purchaser:

349 (a) Installation charges;

350 "Sales price" shall not include:

- 351 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third party that  
352 are allowed by a seller and taken by a purchaser on a sale;
- 353 (b) Interest, financing, and carrying charges from credit extended on the sale of personal  
354 property or services, if the amount is separately stated on the invoice, bill of sale or  
355 similar document given to the purchaser;
- 356 (c) Any taxes legally imposed directly on the consumer that are separately stated on the  
357 invoice, billing, or similar document given to the purchaser; and
- 358 (d) Employee discounts that are reimbursed by a third party on sales of motor vehicles and  
359 manufacturer rebates on motor vehicles.

360 "Sales price" shall include consideration received by the seller from third parties if:

361 A. The seller actually receives consideration from a party other than the purchaser and  
362 the consideration is directly related to a price reduction or discount on the sale;

363 B. The seller has an obligation to pass the price reduction or discount through to the  
364 purchaser;

365 C. The amount of the consideration attributable to the sale is fixed and determinable by  
366 the seller at the time of the sale of the item to the purchaser; and

367 D. One of the following criteria is met:

368 1. The purchaser presents a coupon, certificate or other documentation to the seller to  
369 claim a price reduction or discount where the coupon, certificate or documentation is authorized,  
370 distributed or granted by a third party with the understanding that the third party will reimburse  
371 any seller to whom the coupon, certificate or documentation is presented;

372           2. The purchaser identifies himself or herself to the seller as a member of a group or  
373 organization entitled to a price reduction or discount (a “preferred customer” card that is  
374 available to any patron does not constitute membership in such a group), or

375           3. The price reduction or discount is identified as a third party price reduction or  
376 discount on the invoice received by the purchaser or on a coupon, certificate or other  
377 documentation presented by the purchaser.

378           “Seller” or “Vendor” a retailer or other person making sales, leases or rentals of tangible  
379 personal property or services.

380           “Services” as used in this chapter and chapter 64I, the term “services” shall be limited to  
381 telecommunications services and related services as defined in Section 1A of this chapter and the  
382 provision of access to prewritten computer software on a server owned by the seller or a third  
383 party.

384           “Soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners.  
385 “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar  
386 milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

387           “Sport or recreational equipment” means items designed for human use and worn in  
388 conjunction with an athletic or recreational activity that are not suitable for general use. “Sport or  
389 recreational equipment” are mutually exclusive of and may be taxed differently than apparel  
390 within the definition of “clothing,” “clothing accessories or equipment,” and “protective  
391 equipment.”

392           “Tangible personal property” means personal property that can be seen, weighed,  
393 measured, felt, or touched, or that is in any other manner perceptible to the senses. “Tangible  
394 personal property” includes electricity, water, gas, steam, and prewritten computer software.

395           "Tax" the excise tax imposed by this chapter.

396           "Taxpayer" any person required to make returns or pay the tax imposed by this chapter.

397           "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains  
398 tobacco.

399           SECTION 2: Chapter 64H of the General Laws, as so appearing, is hereby amended by inserting  
400 after section 1 the following new sections:--

401           SECTION 1A. Telecommunications and Related Services

402           All of the following shall be deemed to be services for purposes of this chapter and chapter sixty-  
403 four I:

404           “Ancillary services” means services that are associated with or incidental to the provision of  
405 “telecommunications services”, including but not limited to “detailed telecommunications  
406 billing”, “directory assistance”, “vertical service”, and “voice mail services”.

407           “Conference bridging service” means an “ancillary service” that links two or more participants  
408 of an audio or video conference call and may include the provision of a telephone number.

409           “Conference bridging service” does not include the “telecommunications services” used to reach  
410 the conference bridge.

411 “Detailed telecommunications billing service” means an “ancillary service” of separately stating  
412 information pertaining to individual calls on a customer’s billing statement.

413 “Directory assistance” means an “ancillary service” of providing telephone number information,  
414 and/or address information.

415 “Vertical service” means an “ancillary service” that is offered in connection with one or more  
416 “telecommunications services”, which offers advanced calling features that allow customers to  
417 identify callers and to manage multiple calls and call connections, including “conference  
418 bridging services”.

419 “Voice mail service” means an “ancillary service” that enables the customer to store, send or  
420 receive recorded messages. “Voice mail service” does not include any “vertical services” that the  
421 customer may be required to have in order to utilize the “voice mail service”.

422 “Telecommunications service” means the electronic transmission, conveyance, or routing of  
423 voice, data, audio, video, or any other information or signals to a point, or between or among  
424 points. The term “telecommunications service” includes such transmission, conveyance, or  
425 routing in which computer processing applications are used to act on the form, code or protocol  
426 of the content for purposes of transmission, conveyance or routing without regard to whether  
427 such service is referred to as voice over Internet protocol services or is classified by the Federal  
428 Communications Commission as enhanced or value added. “Telecommunications service” does  
429 not include:

430           A. Data processing and information services that allow data to be generated, acquired,  
431 stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where

432 such purchaser's primary purpose for the underlying transaction is the processed data or  
433 information;

434 B. Installation or maintenance of wiring or equipment on a customer's premises;

435 C. Tangible personal property;

436 D. Advertising, including but not limited to directory advertising.

437 E. Billing and collection services provided to third parties;

438 F. Internet access service;

439 G. Radio and television audio and video programming services, regardless of the  
440 medium, including the furnishing of transmission, conveyance and routing of such services by  
441 the programming service provider. Radio and television audio and video programming services  
442 shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video  
443 programming services delivered by commercial mobile radio service providers, as defined in 47  
444 CFR 20.3;

445 H. "Ancillary services"; or

446 I. Digital products "delivered electronically", including but not limited to software,  
447 music, 4 video, reading materials or ring tones.

448 "800 service" means a "telecommunications service" that allows a caller to dial a toll-free  
449 number without incurring a charge for the call. The service is typically marketed under the name  
450 "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated  
451 by the Federal Communications Commission.

452 “900 service” means an inbound toll “telecommunications service” purchased by a subscriber  
453 that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or  
454 live service. “900 service” does not include the charge for: collection services provided by the  
455 seller of the “telecommunications services” to the subscriber, or service or product sold by the  
456 subscriber to the subscriber’s customer. The service is typically marketed under the name “900”  
457 service, and any subsequent numbers designated by the Federal Communications Commission.

458 “Fixed wireless service” means a “telecommunications service” that provides radio  
459 communication between fixed points.

460 “Mobile wireless service” means a “telecommunications service” that is transmitted, conveyed or  
461 routed regardless of the technology used, whereby the origination and/or termination points of  
462 the transmission, conveyance or routing are not fixed, including, by way of example only,  
463 “telecommunications services” that are provided by a commercial mobile radio service provider.

464 “Paging service” means a “telecommunications service” that provides transmission of coded  
465 radio signals for the purpose of activating specific pagers; such transmissions may include  
466 messages and/or sounds.

467 “Prepaid calling service” means the right to access exclusively “telecommunications services”,  
468 which must be paid for in advance and which enables the origination of calls using an access  
469 number or authorization code, whether manually or electronically dialed, and that is sold in  
470 predetermined units or dollars of which the number declines with use in a known amount.

471 “Prepaid wireless calling service” means a “telecommunications service” that provides the right  
472 to utilize “mobile wireless service” as well as other non-telecommunications services including  
473 the download of digital products “delivered electronically”, content and “ancillary services”,

474 which must be paid for in advance that is sold in predetermined units of dollars of which the  
475 number declines with use in a known amount.

476 “Private communications service” means a “telecommunications service” that entitles the  
477 customer to exclusive or priority use of a communications channel or group of channels between  
478 or among termination points, regardless of the manner in which such channel or channels are  
479 connected, and includes switching capacity, extension lines, stations, and any other associated  
480 services that are provided in connection with the use of such channel or channels.

481 “Value-added non-voice data service” means a service that otherwise meets the definition of  
482 “telecommunications services” in which computer processing applications are used to act on the  
483 form, content, code, or protocol of the information or data primarily for a purpose other than  
484 transmission, conveyance or routing.

485 “Residential telecommunications service” means a “telecommunications service” or “ancillary  
486 services” provided to an individual for personal use at a residential address, including an  
487 individual dwelling unit such as an apartment. In the case of institutions where individuals  
488 reside, such as schools or nursing homes, “telecommunications service” is considered residential  
489 if it is provided to and paid for by an individual resident rather than the institution.

#### 490 SECTION 1B. General Sourcing Rules.

491 (a) The provisions of this section apply regardless of the characterization of a product as tangible  
492 personal property, a digital good, or a service. The provisions of this section only apply to  
493 determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the  
494 seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or  
495 lessee to remit tax on the use of the product to the taxing jurisdictions of that use. The provisions

496 of this section apply to watercraft, motor vehicles, trailers, and semi-trailers. The provisions of  
497 this section do not apply to direct mail and telecommunications or ancillary services. So called  
498 wire sales by florists, that is orders taken by a florist in the commonwealth and filled by another  
499 florist in another state, are sourced to the business location of the florist in the commonwealth in  
500 accordance with (b)(1) of this section.

501 (b) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

502 (1) When the product is received by the purchaser at a business location of the seller, the  
503 sale is sourced to that business location.

504 (2) When the product is not received by the purchaser at a business location of the seller,  
505 the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee,  
506 designated as such by the purchaser) occurs, including the location indicated by instructions for  
507 delivery to the purchaser or donee, known to the seller.

508 (3) When paragraphs (1) and (2) of subsection (b) do not apply, the sale is sourced to the  
509 location indicated by an address for the purchaser that is available from the business records of  
510 the seller that are maintained in the ordinary course of the seller's business when use of this  
511 address does not constitute bad faith.

512 (4) When paragraphs (1), (2) and (3) of subsection (b) do not apply, the sale is sourced to  
513 the location indicated by an address for the purchaser obtained during the consummation of the  
514 sale, including the address of a purchaser's payment instrument, if no other address is available,  
515 when use of this address does not constitute bad faith.

516 (5) When none of the provisions of paragraphs (1), (2), (3) or (4) of subsection (b) apply,  
517 including the circumstance in which the seller is without sufficient information to apply the

518 provisions of paragraphs (1), (2), (3) or (4) of subsection (b), then the location will be  
519 determined by the address from which the tangible personal property was shipped, from which  
520 the digital good or the computer software delivered electronically was first available for  
521 transmission by the seller, or from which the service was provided (disregarding for these  
522 purposes any location that merely provided the digital transfer of the product sold).

523 (c) The lease or rental of tangible personal property, other than the property identified in  
524 subsection (d) or (e) shall be sourced as follows:

525 (1) For a lease or rental that required recurring periodic payments, the first periodic  
526 payment is sourced the same as a retail sale in accordance with the provisions of subsection (b).  
527 Periodic payments made subsequent to the first payment are sourced to the primary property  
528 location for each period covered by the payment. The primary property location shall be as  
529 indicated by an address for the property provided by the lessee that is available to the lessor from  
530 its records maintained in the ordinary course of business, when use of this address does not  
531 constitute bad faith. The property location shall not be altered by intermittent use at different  
532 locations, such as use of business property that accompanies employees on business trips and  
533 service calls.

534 (2) For a lease or rental that does not require recurring periodic payments, the payment is  
535 sourced the same as a retail sale in accordance with the provisions of subsection (b).

536 (3) Subsection (c) does not affect the imposition or computation of sales or use tax on  
537 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for  
538 lease.

539 (d) The lease or rental of motor vehicles, trailers or semi-trailers that do not qualify as  
540 transportation equipment, as defined in subsection (e), shall be sourced as follows:

541 (1) For a lease or rental that requires recurring payments, each periodic payment is  
542 sourced to the primary property location. The primary property location shall be as indicated by  
543 an address for the property provided by the lessee that is available to the lessor from its records  
544 maintained in the ordinary course of business, when use of this address does not constitute bad  
545 faith. This location shall not be altered by intermittent use at different locations.

546 (2) For a lease or rental that does not require recurring periodic payments, the payment is  
547 sourced the same as a retail sale in accordance with the provisions of subsection (b).

548 (3) Subsection (d) does not affect the imposition or computation of sales or use tax on  
549 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for  
550 lease.

551 (e) The retail sale, including lease or rental, of transportation equipment shall be sourced the  
552 same as a retail sale in accordance with the provisions of subsection (b), notwithstanding the  
553 exclusion of lease or rental in subsection (b). "Transportation equipment" means any of the  
554 following:

555 (1) locomotives and railcars that are utilized for the carriage of persons or property in  
556 interstate commerce;

557 (2) trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001  
558 pounds or greater, trailers, semi-trailers, or passenger buses that are registered through the  
559 International Registration Plan and operated under authority of a carrier authorized and

560 certificated by the United States Department of Transportation or other federal authority to  
561 engage in the carriage of persons or property in interstate commerce;

562 (3) aircraft that are operated by air carriers authorized and certificated by the U.S.  
563 Department of Transportation or another federal or foreign authority to engage in the carriage of  
564 persons or property in interstate or foreign commerce.

565 (4) containers designed for use on and component parts attached or secured on the items  
566 set forth in this subsection.

567 (f) For purposes of subsection (b), the terms “receive” and “receipt” mean: taking possession of  
568 tangible personal property, or making first use of services, or taking possession or making first  
569 use of digital goods, whichever comes first. The terms “receive” and “receipt” do not include  
570 possession by a shipping company on behalf of the purchaser.

#### 571 SECTION 1C. Direct Mail Sourcing Rules.

572 (a) Notwithstanding section 1B, a purchaser of direct mail that is not a holder of a direct mail  
573 pay permit shall provide to the seller in conjunction with the purchase either a Direct Mail Form  
574 or information to show the jurisdiction to which the direct mail is delivered to recipients.

575 1. Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to collect, pay,  
576 or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on  
577 a direct pay basis. A Direct Mail Form shall remain in effect for all future sales of direct  
578 mail by the seller to the purchaser until it is revoked in writing.

579 2. Upon receipt of information from the purchaser showing the jurisdictions to which the direct  
580 mail is delivered to recipients, the seller shall collect the tax according to the delivery  
581 information provided by the purchaser. In the absence of bad faith, the seller is relieved of

582 any further obligation to collect tax on any transaction where the seller has collected tax  
583 pursuant to the delivery information provided by the purchaser.

584 (b) If the purchaser of direct mail does not have a direct pay permit and does not provide the  
585 seller with either a Direct Mail Form or delivery information, as required by subsection (a) of  
586 this section, the seller shall collect the tax according to section 1B, subsection (a) 5. Nothing  
587 in this paragraph shall limit the purchaser's obligation for sales or use tax to any state to  
588 which the direct mail is delivered.

589 (c) If a purchaser of direct mail provides the seller with documentation of direct pay authority,  
590 the purchaser shall not be required to provide a Direct Mail Form or delivery information

591 SECTION 1D. Telecommunications and Related Services Sourcing Rules.

592 (a) Except for the defined telecommunication services in subsection (c), the sale of  
593 telecommunications services sold on a call by call basis shall be sourced to (i) each level of  
594 taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each  
595 level of taxing jurisdiction where the call either originates or terminates and in which the  
596 services address is also located.

597 (b) Except for the defined telecommunications services in subsection (c), a sale of  
598 telecommunications services sold on a basis other than a call by call basis, is sourced to the  
599 customer's place of primary use.

600 (c) The sale of the following telecommunications services shall be sourced to each level of  
601 taxing jurisdiction as follows:

602 1. A sale of mobile telecommunications services other than air-to-ground radiotelephone  
603 service and prepaid calling service, is sourced to the customer's place of primary use as  
604 required by the Mobile Telecommunications Sourcing Act.

605 2. A sale of post-paid calling service is sourced to the origination point of the  
606 telecommunications signal as first identified by either (i) the seller's telecommunications  
607 system, or (ii) information received by the seller from its service provider, where the system  
608 used to transport such signals is not that of the seller.

609 3. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in  
610 accordance with section 1B of this chapter. Provided however, in the case of a sale of prepaid  
611 wireless calling service, the rule provided in section 1B, subsection (b)(5) shall include as an  
612 option the location associated with the mobile telephone number.

613 4. A sale of a private communication service is sourced as follows:

614 a. Service for a separate charge related to a customer channel termination point is sourced  
615 to each level of jurisdiction in which such customer channel termination point is  
616 located.

617 b. Service where all customer termination points are located entirely within one  
618 jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the  
619 customer channel termination points are located.

620 c. Service for segments of a channel between two customer channel termination points  
621 located indifferent jurisdictions and which segment of channel are separately charged is  
622 sourced fifty percent in each level of jurisdiction in which the customer channel  
623 termination points are located.

624 d. Service for segments of a channel located in more than one jurisdiction of levels of  
625 jurisdiction and which segments are not separately billed is sourced in each jurisdiction  
626 based on the percentage determined by dividing the number of customer channel

627 termination points in such jurisdiction by the total number of customer channel  
628 termination points.

629 (d) The sale of an ancillary service is sourced to the customer's place of primary use.

630 SECTION 1E. Telecommunications Sourcing Definitions. For the purpose of section 1D, the  
631 following definitions apply:

632 A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in  
633 47 CFR 22.99, in which common carriers are authorized to offer and provide radio  
634 telecommunications service for hire to subscribers in aircraft.

635 B. "Ancillary Services" means services that are associated with or incidental to the provision  
636 of "telecommunications services," including but not limited to "detailed  
637 telecommunications billing," "directory assistance," "vertical service,, and "voice mail  
638 services."

639 C. "Call-by-call Basis" means any method of charging for telecommunications services where  
640 the price is measured by individual calls.

641 D. "Communications Channel" means a physical or virtual path of communications over  
642 which signals are transmitted between or among customer channel termination points.

643 E. "Customer" means the person or entity that contracts with the seller of telecommunications  
644 services. If the end user of telecommunications services is not the contracting party, the  
645 end user of the telecommunications service is the customer of the telecommunications  
646 service, but this sentence only applies for the purpose of sourcing sales of  
647 telecommunication services under section 1C. "Customer" does not include a reseller of  
648 telecommunications service or for mobile telecommunications service of a serving carrier

649 under an agreement to serve the customer outside the home service provider's licensed  
650 service area.

651 F. "Customer Channel Termination Point" means the location where the customer either  
652 inputs or receives communications.

653 G. "End User" means the person who utilizes the telecommunication service. In the case of an  
654 entity, "end user" means the individual who utilizes the service on behalf of the entity.

655 H. "Home service provider" means the same as that term is defined in section 124(5) of Public  
656 Law 106-252 (Mobile Telecommunications Sourcing Act).

657 I. "Mobile telecommunications service" means the same as that term is defined in section  
658 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

659 J. "Place of primary use" means the street address representative of where the customer's use  
660 of the telecommunications service primarily occurs, which must be the residential street  
661 address or the primary business street address of the customer. In the case of mobile  
662 telecommunications services, "place of primary use" must be within the licensed service  
663 area of the home service provider.

664 K. "Post-paid calling service" means the telecommunications service obtained by making a  
665 payment on a call-by-call basis either through the use of a credit card or payment  
666 mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to  
667 a telephone number which is not associated with the origination or termination of the  
668 telecommunications service. A post-paid calling service includes a telecommunications  
669 service that would be a prepaid calling service except it is not exclusively a  
670 telecommunication service.

671 L. "Prepaid calling service" means the right to access exclusively telecommunications  
672 services, which must be paid for in advance and which enables the origination of calls  
673 using an access number or authorization code, whether manually or electronically dialed,  
674 and that is sold in predetermined units or dollars of which the number declines with use in a  
675 known amount.

676 M. "Prepaid wireless calling service" means a telecommunications service that provides the  
677 right to utilize mobile wireless service as well as other non-telecommunications services,  
678 including the download of digital products delivered electronically, content and ancillary  
679 services, which much be paid for in advance that is sold in predetermined units or dollars of  
680 which the number declines with use in a known amount.

681 N. "Private communication service" means a telecommunication service that entitles the  
682 customer to exclusive or priority use of a communications channel or group of channels  
683 between or among termination points, regardless of the manner in which such channel or  
684 channels are connected, and includes switching capacity, extension lines, stations, and any  
685 other associated services that are provided in connection with the use of such channel of  
686 channels.

687 O. "Service address" means:

688 1. The location of the telecommunications equipment to which a customer's call is charged  
689 and from which the call originates or terminates, regardless of where the call is billed or  
690 paid.

691 2. If the location in subsection (O)(1) is not known, service address means the origination  
692 point of the signal of the telecommunications services first identified by either the seller's

693 telecommunications system or in information received by the seller from its service  
694 provider, where the system used to transport such signal is not that of the seller.

695 3. If the location in section (O)(1) and subsection (O)(2) are not known, the service address  
696 means the location of the customer's place of primary use.

697 SECTION 3: Section 2 of Chapter 64H of the General laws, as so appearing, is hereby amended  
698 by replacing it with the following:

699 An excise is hereby imposed upon sales at retail sourced to the commonwealth under the  
700 applicable rules in this chapter, by any seller, of tangible personal property, bundled transactions  
701 including a taxable product, alcoholic beverages for on-premises consumption, or services at the  
702 rate of five percent on all such sales of such property or services, except as otherwise provided in  
703 this chapter, and not on a "service charge" or "tip" that is distributed by a seller to service  
704 employees, wait staff employees or service bartenders as provided in section 152A of chapter  
705 149. In the case of a bundled transaction that includes telecommunications services, ancillary  
706 services, internet access, or audio or video programming service, if the price is attributable to  
707 products that are taxable and products that are nontaxable, the portion of the price attributable to  
708 the nontaxable products may be subject to tax unless the seller can identify by reasonable and  
709 verifiable standards such portion from its books and records that are kept in the regular course of  
710 business for other purposes, including, but not limited to, non-tax purposes. The excise shall be  
711 paid by the seller to the commissioner at the time provided for filing the return required by  
712 section sixteen of chapter sixty-two C.

713 SECTION 4: Section 4 of Chapter 64H of the General Laws, as so appearing, is hereby  
714 amended by striking it out in its entirety and inserting in its place the following new Section 4:  
715 For the purpose of adding and collecting the tax imposed by this chapter to be reimbursed to the  
716 seller by the purchaser, the tax computation must be carried to the third decimal place, and it  
717 must be rounded to a whole cent, rounding up to the next cent whenever the third decimal place  
718 is greater than four. A seller may elect to compute the tax due on a transaction on an item or an  
719 invoice basis.

720 SECTION 5: Section 6 of Chapter 64H of the General Laws, as so appearing, is hereby  
721 amended as follows:

722 SECTION 6(b) is amended by striking everything following the word “import” and adding a  
723 period following that word.

724 SECTION 6(h) is repealed in its entirety and replaced with the following:

725 Sales of food and food ingredients including candy, soft drinks, or food sold through vending  
726 machines with a sales price of less than \$3.50, but not alcoholic beverages for on-premises  
727 consumption, dietary supplements, prepared food or tobacco. Prepared food sold by a bed and  
728 breakfast establishment or bed and breakfast home as defined in chapter 64G shall not be subject  
729 to tax under this chapter where the value of the breakfast served is included in the rent for the  
730 room.

731 SECTION 6(k) is repealed in its entirety and replaced with the following:

732 Sales of essential clothing, not including clothing accessories, protective equipment, sport or  
733 recreational equipment, or fur clothing as defined in this chapter.

734 SECTION 6(l) is repealed in its entirety and replaced with the following:

735 Sales of the following on prescription: drugs and over-the-counter drugs for human use, durable  
736 medical equipment for home use, mobility enhancing equipment, and prosthetic devices.

737 SECTION 6(cc) is amended by striking the word “meal” each time it appears and substituting  
738 “prepared food” and by striking the word “prepared by” in lines 353 and 357 and inserting  
739 “made by”.

740 SECTION 6(ff) is repealed in its entirety and replaced with the following:

741 (ff) Sales of "direct and cooperative direct mail promotional advertising materials" defined as  
742 individual discount coupons, or advertising leaflets incorporating the coupons within the  
743 promotional advertising materials no greater than 6 pages in length, and including any  
744 accompanying envelopes and labels. In order to be exempt hereunder, the promotional  
745 advertising materials shall be distributed as a part of a package of materials promoting 1 or more  
746 than 1 business, each operated at separate and distinct locations, and directed in a single package  
747 to potential customers, at no charge to the potential customer, of the businesses paying for the  
748 delivery of such material. For the purpose of this paragraph, "direct and cooperative direct mail  
749 promotional advertising materials" shall not include mail order catalogs, department store  
750 catalogs, telephone directories, or similar printed advertising books, booklets or circulars greater  
751 than 6 pages in total length.

752 The section is further amended by added the following new section 6(xx):

753 Sales of tickets for admissions to places of amusement and sports.

754 The section is further amended by adding the following new section 6(yy):

755 Sales of “specified digital products,” as defined in this chapter.

756 SECTION 6: Section 7 of Chapter 64H of the General Laws, as so appearing, is hereby  
757 amended by striking the section in its entirety and replacing it with the following:  
758 No person shall do business in this commonwealth as a seller unless a registration shall have  
759 been issued to him. For persons with business locations physically located in the  
760 commonwealth, a registration shall be obtained for each place of business in the commonwealth  
761 in accordance with section sixty-seven of chapter sixty-two C. When registering, a seller may  
762 select one of the following methods of remittances:

763 A. Model 1, wherein a seller selects a Certified Service Provider as an agent to perform all of  
764 the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own  
765 purchases. For purposes of this section, an agent is a person authorized in writing by a seller  
766 to represent the seller before member states of the Streamlined Sales Tax Governing Board;

767 B. Model 2, wherein a seller selects a Certified Automated System to use which calculates the  
768 amount of tax due on a transaction, but retains responsibility for remitting the tax; or

769 C. Model 3, wherein a seller or an affiliated group of sellers utilizes its own proprietary  
770 automated sales tax system that calculates the amount of tax due each jurisdiction and has  
771 been certified as a Certified Automated System. A Model 3 seller must:

772 (1.) have sales in at least five member states of the Streamlined Sales Tax Governing Board, and

773 (2.) have total annual sales revenue of at least five hundred million dollars, and

774 (3.) enter into a performance agreement approved by the Streamlined Sales Tax Governing  
775 Board, Inc.

776 SECTION 7: Chapter 64H of the General Laws, as so appearing, is hereby is amended by  
777 adding after Section 7, the following new section 7A:

778 7A. Amnesty for Registration

779 A seller that registers to collect and remit the tax imposed by this chapter and chapter 64I on or  
780 after the date the commonwealth is accepted as a full member of the Streamlined Sales Tax  
781 Governing Board, Inc. and for a period of one year thereafter, will be entitled to amnesty for  
782 uncollected or unpaid sales or use tax, penalty and interest providing that the seller was not  
783 registered in the commonwealth in the 12 month period preceding the date of such acceptance.  
784 The amnesty provided by this section is not available to a seller with respect to any matter or  
785 matters for which the seller received notice of the commencement of an audit or an audit  
786 assessment, including any administrative or judicial appeals. The amnesty is also not available  
787 for sales or use taxes already paid or remitted to the commonwealth or to taxes collected by the  
788 seller. The amnesty is effective, absent the seller's fraud or intentional misrepresentation of a  
789 material fact, as long as the seller continues registration and continues to pay or collect and remit  
790 applicable sales or use taxes for a period of at least 36 months. The amnesty is applicable only to  
791 sales or use taxes due from a seller in its capacity as a seller and not to sales or sue taxes due  
792 from a seller in its capacity as a buyer.

793 SECTION 8: Chapter 64H of the General Laws, as so appearing, is hereby is amended by  
794 adding after Section 7A, the following new section 7B:

795 7B. Monetary Allowances for Sales Tax Collection

796 (a) A monetary allowance shall be allowed to a Certified Service Provider under Model 1 in  
797 accordance with the terms of the contracts between the Streamlined Sales Tax Governing  
798 Board and the Certified Service Providers for a period not to exceed 24 months following a  
799 voluntary seller's registration through the Streamlined Sales Tax Governing Board's central  
800 registration process. The compensation shall be a percentage of tax revenue generated for

801 the commonwealth by the voluntary seller that does not have a requirement to register to  
802 collect the tax.

803 (b) A seller electing to use a Certified Automated System under Model 2 may receive a  
804 monetary allowance to be determined by the Streamlined Sales Tax Project Governing Board  
805 for a period not to exceed twenty four months following a voluntary seller's registration  
806 through the Streamlined Sales Tax Governing Board's central registration process. The  
807 compensation may be a percentage of tax revenue generated for the commonwealth by the  
808 voluntary seller that does not have a requirement to register to collect the tax.

809 (c) A seller that utilizes its own proprietary automated sales tax system that has been certified as  
810 a Certified Automated System under Model 3 and all other sellers not covered under (a) or  
811 (b) that voluntarily register through the Streamlined Sales Tax Governing Board's central  
812 registration process may receive a monetary allowance to be determined by the Streamlined  
813 Sales Tax Governing Board for a period not to exceed 24 months following the registration.  
814 The compensation may be a percentage of tax revenue generated for the commonwealth by  
815 the voluntary seller that does not have a requirement to register to collect the tax.

816 (d) A seller may receive additional compensation as required by the Streamlined Sales and Use  
817 Tax Agreement, as amended.

818 SECTION 9: Section 8 of Chapter 64H of the General Laws, as so appearing, is hereby  
819 amended by striking the section in its entirety and replacing it with the following:

820 (a) It shall be presumed that all gross receipts of a seller from the sale of services or tangible  
821 personal property are from sales subject to tax until the contrary is established. The burden of  
822 proving that a sale of services or tangible personal property by any seller is not subject to tax  
823 shall be upon such seller unless he takes in good faith from the purchaser a certificate of

824 exemption to the effect that the service or property is purchased for resale, or the service or  
825 property is exempt from the tax imposed by this chapter and such certificate of exemption is  
826 obtained by the seller not later than ninety days subsequent to the date of the sale. Where a  
827 certificate is not obtained within the foregoing time limit the seller is not relieved of its  
828 burden of proving that the sale was exempt or for resale and the seller must prove by other  
829 means, within one hundred twenty days subsequent to the date of notice from the  
830 commissioner, that the sale was not a retail sale subject to tax or produce a fully completed  
831 exemption certificate from the purchaser taken in good faith.

832 (b) The certificate of exemption shall relieve the seller from the burden of proof and any liability  
833 for the tax if it is determined that the purchaser improperly claimed an exemption unless:

834 (1) the seller fraudulently fails to collect the tax, or

835 (2) the seller solicits purchasers to participate in the unlawful claim of an exemption, or

836 (3) a seller physically located within the commonwealth accepts an exemption certificate that  
837 claims an entity based exemption not contained in this chapter in a transaction involving  
838 a product received by the purchaser at a business location of the seller.

839 (c) The certificate of exemption shall bear the name and address of the purchaser and the  
840 purchaser's tax identification number or other identification number. If the certificate of  
841 exemption is submitted in paper form by the purchaser, it shall bear the purchaser's  
842 signature. The certificate shall be in such form as the commissioner may prescribe.

843 (d) If a purchaser who gives a certificate of exemption indicating that the purchase was for resale  
844 in the regular course of business makes any use of the service or property other than  
845 retention, demonstration or display while holding it for sale in the regular course of business,  
846 the use shall be deemed a retail sale by the purchaser as of the time the service or property is

847 first used by him, and the cost of the service or property to him shall be deemed the gross  
848 receipts from such retail sale. If the sole use of the property other than retention,  
849 demonstration or display in the regular course of business is the rental of the property while  
850 holding it for sale, the purchaser may elect to include in its gross receipts the amount of the  
851 rental charge rather than the cost of the property to him.

852 (e) If a purchaser who gives a certificate of exemption makes any use of the property  
853 inconsistent with the exemption claimed on the certificate, the use shall be deemed a retail  
854 sale by the purchaser as of the time the property is first so used and the cost of the property to  
855 the purchaser shall be deemed the gross receipts from such retail sale.

856 (f) A seller may obtain a blanket exemption certificate from a purchaser with which the seller  
857 has a recurring business relationship and will be relieved of liability as otherwise provided in  
858 this section. For purposes of this section a recurring business relationship exists when a  
859 period of no more than twelve months elapses between sales transactions.

860 (g) For purposes of this section, a certificate of exemption may be either in paper or electronic  
861 format. The requirement of taking a certificate is satisfied if the seller otherwise captures all  
862 required data elements of such a certificate in its books and records. The commissioner may  
863 promulgate rules and regulations determining which services shall be deemed purchased for  
864 resale under this section.

865 SECTION 10: Chapter 64H of the General Laws, as so appearing, is hereby is amended by  
866 adding after Section 8, the following new section 8A:

867 8A. Relief from Liability

868 A. The commissioner shall publish a taxability matrix in the form and manner prescribed by the  
869 Streamlined Sales Tax Governing Board, Inc. and shall relieve sellers and certified service

870 providers from liability for having charged and collected the incorrect amount of sales or use tax  
871 resulting from the seller or certified service provider relying on erroneous data provided in the  
872 taxability matrix.

873 B. A purchaser is relieved from liability for having failed to pay the correct amount of sales or  
874 use tax in the following circumstances:

875 1. A purchaser's seller or CSP relied on erroneous data provided by the commissioner in  
876 the taxability matrix;

877 2. A purchaser holding a direct pay permit relied on erroneous data provided by the  
878 commissioner in the taxability matrix;

879 3. A purchaser relied on erroneous data provided by the commissioner in the taxability  
880 matrix.

881 For purposes of this section, erroneous data is limited to incorrect classification in the taxability  
882 matrix of defined products as taxable or exempt, included or excluded from sales price, or  
883 included or excluded from a defined product. For purposes of this section, relief from liability  
884 includes liability for tax, interest and penalty.

885 C. Following certification to the Streamlined Sales Tax Governing Board that the commissioner  
886 has reviewed the taxability of the product categories contained in software used by a Certified  
887 Service Provider or a Certified Automated System, the Certified Service Provider or seller using  
888 the Certified Automated System is relieved from liability for not collecting sales or use taxes  
889 resulting from reliance on that certification. The relief from liability provided in this section  
890 shall not be available where the Certified Service Provider or seller using a Certified Automated

891 System has incorrectly classified an item or transaction into a product category certified by the  
892 commissioner. In the case of such a misclassification, the Certified Service Provider or seller  
893 using a Certified Automated System shall be given 10 days to correct any such error, and  
894 following that 10 day period, will be liable for the failure to collect the correct amount of sales or  
895 use taxes.

896 SECTION 11: Section 26 of Chapter 64H of the General Laws, as so appearing, is amended by  
897 adding the following at the end.

898 Where a motor vehicle is returned to a seller pursuant to a rescission of contract within one  
899 hundred and eighty days of the date of sale and the entire amounts charged for the motor vehicle,  
900 less the sellers' established handling fees, if any, for return of the property, are refunded either in  
901 cash or credit, the purchaser may apply to the Commissioner for a refund of any tax paid under  
902 this chapter or chapter 64I within the time limitations provided in chapter 62C, section 37. In  
903 the case of a rescission of contract for the sale of a motor vehicle, the seller's established handling  
904 fees may include a reasonable allowance for the purchaser's use of the vehicle.

905 SECTION 12: Section 33 of Chapter 64H of the General Laws, as so appearing, is hereby is  
906 amended by striking the section in its entirety and replacing it with the following:

907 Section 33: Bad Debts. Any seller who has paid to the commissioner an excise under this  
908 chapter upon a sale for which credit is given to the purchaser and such account is later  
909 determined to be a bad debt may deduct the amount of the bad debt on the return for the period  
910 during which the bad debt is written off as uncollectable in the seller's books and records and is  
911 eligible to be deducted for federal income tax purposes, whether or not the seller is required to  
912 file a federal income tax return. For purposes of this section, (1) a seller entitled to a deduction  
913 does not include an assignee or factor of such seller and (2) bad debt shall have the same

914 meaning as in 26 U.S.C. 166, but excluding financing charges or interest, sales or use taxes  
915 charged on the purchase price, uncollectable amounts on property that remain in the possession  
916 of the seller until the full purchase price is paid, expenses incurred in attempting to collect any  
917 debt, and repossessed property. If a seller takes a deduction for a bad debt as provided in this  
918 section and the debt is subsequently collected in whole or in part, the tax on the amount so  
919 collected must be paid and reported on the return filed for the period in which the collection is  
920 made. For purposes of reporting a payment received on a previously claimed bad debt, any  
921 payments made on a debt or account shall be applied first proportionately to the taxable sales  
922 price and tax and second to interest, service charges, and any other charges. If a bad debt  
923 exceeds the amount of taxable sales for the period during which the bad debt is written off, an  
924 application for abatement may be filed within the time limitations of G.L. c. 62C, § 37, provided  
925 however that notwithstanding any provisions of G.L. c. 62C, § 37 to the contrary, the three year  
926 time limitation shall be measured from the due date of the return on which the bad debt could  
927 first be claimed. Where a seller has elected to utilize a Certified Service Provider, the Certified  
928 Service Provider may claim, on behalf of the seller any bad debt allowance provided by this  
929 section, provided that the Certified Service Provider credits or refunds the full amount of any bad  
930 debt allowance or refund to the seller. In situations where the books and records of the seller  
931 support an allocation of the bad debts among member states of the Streamlined Sales Tax  
932 Governing Board, such an allocation is permitted.

933 SECTION 13: Chapter 64H of the General Laws, as so appearing, is hereby is amended by  
934 adding the following new section 34:

935 Section 34: Demand for Return of Overpaid Tax

936 (a) In the event a seller shall refuse to return a sales tax upon request by the customer, whether  
937 directly in the case of rescissions under section one, or indirectly through the abatement  
938 process under section thirty-seven of chapter sixty-two C, the customer shall not have a cause  
939 of action against the seller until a written notice of demand is made upon the seller and at  
940 least 60 days have elapsed since the time of the demand. Such demand must contain  
941 sufficient information to allow the seller to determine the validity of the request.

942 (b) In connection with a customer's request for a return of overpaid sales taxes, a seller shall be  
943 presumed to have a reasonable business practice if in the collection of sale taxes the seller (I)  
944 uses either a provider or system, including a proprietary system, certified by the state; and (ii)  
945 has remitted to the state all taxes collected, less any established handing fee permitted under  
946 G.L. c. 64H, § 1.

947 SECTION 14: Section 5 of Chapter 64I of the General Laws, as so appearing, is hereby  
948 amended by striking it out in its entirety and inserting in its place the following new Section 5:  
949 For the purpose of adding and collecting the tax imposed by this chapter to be paid to the  
950 commonwealth or to be reimbursed to the seller by the purchaser, the tax computation must be  
951 carried to the third decimal place, and it must be rounded to a whole cent, rounding up to the  
952 next cent whenever the third decimal place is greater than four. A seller may elect to compute  
953 the tax due on a transaction on an item or an invoice basis.

954 SECTION 15: Section 8 of Chapter 64I of the General Laws, as so appearing, is hereby  
955 amended by striking the section in its entirety and replacing it with the following:

956 (a) For the purpose of the proper administration of this chapter and to prevent evasion of the tax  
957 imposed hereunder, it shall be presumed that tangible personal property or services sold by  
958 any person for delivery in the commonwealth is sold for storage, use or other consumption in

959 the commonwealth until the contrary is established. The burden of proving the contrary is  
960 upon the person who makes the sale unless he takes in good faith from the purchaser a  
961 certificate of exemption to the effect that the service or property is purchased for resale, or  
962 the service or property is exempt from the tax imposed by this chapter and such certificate of  
963 exemption is received not later than ninety days subsequent to the date of the sale. Where a  
964 certificate is not obtained within the foregoing time limit the seller is not relieved of its  
965 burden of proving that the sale was exempt or for resale and the seller must prove by other  
966 means, within one hundred twenty days subsequent to the date of notice from the  
967 commissioner, that the sale was not a retail sale subject to tax or produce a fully completed  
968 exemption certificate from the purchaser taken in good faith.

969 (b) The certificate shall relieve the seller from the burden of proof and any liability for the tax if  
970 it is determined that the purchaser improperly claimed an exemption unless

971 (1) the seller fraudulently fails to collect the tax, or

972 (2) the seller solicits purchasers to participate in the unlawful claim of an exemption, or

973 (3) a seller physically located within the commonwealth accepts an exemption certificate that  
974 claims an entity based exemption not contained in this chapter in a transaction involving  
975 a product received by the purchaser at a business location of the seller.

976 (c) The certificate of exemption shall bear the name and address of the purchaser and the  
977 purchaser's tax identification number or other identification number. If the certificate of  
978 exemption is submitted in paper form by the purchaser, it shall bear the purchaser's  
979 signature. The certificate shall be in such form as the commissioner may prescribe.

980 (d) If a purchaser who gives a certificate of exemption indicating that the purchase was for resale  
981 in the regular course of business makes any use of the service or property other than

982 retention, demonstration or display while holding it for sale in the regular course of business,  
983 the storage or use is taxable as of as of the time the service or property is first so stored or  
984 used by him. If the sole use of the property other than retention, demonstration or display in  
985 the regular course of business is the rental of the property while holding it for sale, the  
986 purchaser may elect to include in its gross receipts the amount of the rental charge rather than  
987 the cost of the property to him.

988 (e) If a purchaser who gives a certificate of exemption makes any use of the property  
989 inconsistent with the exemption claimed on the certificate, the use shall be deemed a retail  
990 sale by the purchaser as of the time the property is first so used and the cost of the property to  
991 the purchaser shall be deemed the gross receipts from such retail sale.

992 (f) It shall be presumed that tangible personal property shipped or brought to the commonwealth  
993 by the purchaser was purchased from a retailer for storage, use, or other consumption in the  
994 commonwealth provided that such property was shipped or brought into the commonwealth  
995 within six months after its purchase.

996 (g) It shall be presumed that services used within the commonwealth by the purchaser were  
997 purchased from the seller for use within the commonwealth provided such services were used  
998 within the commonwealth within six months after its purchase.

999 (h) For purposes of this section, a certificate of exemption may be either in paper or electronic  
1000 format. The requirement of taking a certificate is satisfied if the seller otherwise captures all  
1001 required data elements of such a certificate in its books and records. The commissioner may  
1002 promulgate rules and regulations determining which services shall be deemed purchased for  
1003 resale under this section.

1004 SECTION 16: Section 34 of Chapter 64I of the General Laws, as so appearing, is hereby  
1005 amended by striking it out in its entirety and inserting in its place the following new Section 34:  
1006 Any seller who has paid to the commissioner an excise under this chapter upon a sale for which  
1007 credit is given to the purchaser and such account is later determined to be a bad debt may deduct  
1008 the amount of the bad debt as provided in G.L. c. 64H, section 33.

1009 SECTION 17: The commonwealth hereby adopts the Streamlined Sales and Use Tax Agreement  
1010 as created on November 12, 2002 and as amended by the member states of the Streamlined Sales  
1011 Tax Governing Board, Inc. The commissioner may promulgate rules and regulations consistent  
1012 with the Streamlined Sales and Use Tax Agreement and any subsequent amendments or  
1013 interpretations thereof adopted by the Streamlined Sales Tax Governing Board, Inc. to ensure  
1014 that the commonwealth remains in compliance with that agreement, as amended.

1015 SECTION 18: The commissioner is authorized to petition the Streamlined Sales Tax Governing  
1016 Board to allow the commonwealth to become an associate or full member of the Streamlined  
1017 Sales Tax Governing Board and to pay the application fee and annual fees from sales and use  
1018 taxes collected under chapters 64H and 64I. If accepted as an associate or full member, the  
1019 commonwealth shall be represented at the Streamlined Sales Tax Governing Board meetings by  
1020 a coalition of 3 delegates:

- 1021 a) 1 voting member from the Department of Revenue who is appointed by the  
1022 commissioner, and
- 1023 b) 1 voting member from each chamber of the legislature appointed by the Speaker of  
1024 the House and the President of the Senate, respectively.

1025 These 3 delegates shall together decide how the commonwealth's interests are best represented  
1026 to the board, voting on issues as indicated above. Since each member state on the Governing

1027 Board is allowed only one vote, the commonwealth's single vote on an issue shall be determined  
1028 by the majority opinion indicated by the votes of the delegates of the commonwealth's coalition.  
1029 If the House delegate is absent, not voting, voting "present," or abstaining from the vote, that  
1030 delegate's proxy shall automatically be given to the Senate delegate. If the Senate delegate is  
1031 absent, not voting, voting "present," or abstaining from the vote, that delegate's proxy shall  
1032 automatically be given to the House delegate. If the Department of Revenue delegate is absent,  
1033 not voting, voting "present," or abstaining from the vote, that delegate's proxy shall be given to  
1034 the legislative delegate of his/her choice.

1035 SECTION 19: Sections 1-16 of this bill shall be effective on the first day of the twelfth month  
1036 following passage.

1037 SECTION 20: Sections 17 and 18 of this bill shall be effective immediately following passage.